

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.Nos.2875, 2644 of 2018, 1015 to 1019 of 2018

1.The State of Tamil Nadu,
by its Secretary,
Public Works Department,
Fort St.George,
Chennai 9

2.The Engineer in Chief and Chief Engineer,
Public Works Department,
Chepauk, Chennai 5 ... Appellants in W.A.No.2875 OF 2018

1 THE PRINCIPAL SECRETARY TO
GOVERNMENT RURAL DEVELOPMENT AND PANCHAYAT
RAJ DEPARTMENT SECRETARIAT CHENNAI - 09.

2 THE DIRECTOR OF RURAL
DEVELOPMENT AND PANCHAYAT RAJ PANAGAL
BUILDINGS SAIDAPET CHENNAI -15.

3 THE DISTRICT COLLECTOR
TIRUVANNAMALAI DISTRICT TIRUVANNAMALAI
... Appellants in WA No.2644 of 2018

1 THE CHIEF SECRETARY TO
GOVERNMENT PERSONNEL AND ADMINISTRATIVE
REFORMS (F) DEPARTMENT FORT ST. GEORGE
CHENNAI-9. ... Appellants in WA No.1015 of 2018

1 THE SECRETARY TO GOVERNMENT
PERSONNEL AND ADMINISTRATIVE REFORMS
DEPARTMENT FORT ST. GEORGE CHENNAI-9.
... Appellants in WA No.1016 of 2018

1 THE CHIEF SECRETARY TO
GOVERNMENT PERSONNEL AND ADMINISTRATIVE
REFORMS (F) DEPARTMENT CHENNAI 9
... Appellants in WA No.1017 of 2018

1 THE CHIEF SECRETARY TO GOVERN
MENT PERSONNEL AND ADMINISTRATIVE REFORMS
(F) DEPARTMENT FORT ST.GEORGE CHENNAI-9
... Appellants in WA No.1018 of 2018

1 THE CHIEF SECRETARY TO
GOVERNMENT PERSONNEL AND ADMINISTRATIVE
REFORMS (F) DEPARTMENT FORT ST. GEORGE
CHENNAI 9
... Appellants in WA No.1019 of 2018

Vs

1.S.John Charles
2.A.Raja Stalin
3.V.Saravanakumar
4.B.S.Chandra Mahalingam
5.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai 600 009 ... Respondents in W.A.No.2875 OF 2018

M.KRISHNAMOORTHY ... RESPONDENT in WA No.2644 of 2018

1 G.SIVAGIGANESAN
2 V.THAMBIDURAI
3 S.SENTHIL
4 M.RAJA
5 M.JAYAKUMAR
6 M.MARUDAMUTHU

7 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY PUBLIC WORKS
DEPARTMENT FORT ST. GEORGE CHENNAI-9.

8 THE PRINCIPAL CHIEF ENGINEER
(BUILDINGS) & CHIEF ENGINEER (GENERAL)
PUBLIC WORKS DEPARTMENT CHEPAUK CHENNAI-5.
... RESPONDENT in WA No.1015 of 2018

1 S.JOHN CHARLES
2 A.RAJA STALIN
3 V.SARAVANAKUMAR
4 B.S.CHANDRA MAHALINGAM

5 THE STATE OF TAMILNADU
REP BY ITS SECRETATY PUBLIC WORKS
DEPARTMENT FORT ST GEORGE CH-9

6 THE ENGINEER IN CHIEF AND
 CHEIF ENGINEER PUBLIC WORKS DEPARTMENT
 CHEPAUK CH-5
 ... RESPONDENT in WA No.1016 of 2018

1 M. PADMAVATHI

2 P. KALA

3 THE STATE OF TAMIL NADU
 REP BY ITS SECRETARY PUBLIC WORKS DEPARTMENT
 FORT ST GEORGE CHENNAI 9

4 THE PRINCIPAL CHIEF ENGINEER
 BUILDINGS & CHIEF ENGINEER GENERAL PUBLIC
 WORKS DEPARTMENT CHEPAUK CHENNAI 5

5 THE EXECUTIVE ENGINEER
 PWD ADYAR SUB DIVISION ADYAR CHENNAI 28
 ... RESPONDENT in WA No.1017 of 2018

1 T.SEENUVASULU

2 J.RUKMANANDAM

3 J.KANCHANA

4 T.R.THIRUMALAI

5 R.SANTHI

6 THE STATE OF TAMIL NADU
 REP. BY ITS SECRETARY PUBLIC WORKS
 DEPARTMENT FORT ST.GEORGE CHENNAI-9.

7 THE PRINCIPAL CHIEF ENGINEER
 (BUILDINGS) & CHIEF ENGINEER (GENERAL)
 CHENNAI REGION PUBLIC WORKS DEPARTMENT
 CHEPAUK CHENNAI-5.

8 THE CHIEF ENGINEER
 WRO PWD CHENNAI REGION CHEPAUK CHENNAI-5.

9 THE CHIEF ENGINEER
 (GROUND WATER) PWD THARAMANI CHENNAI-113.
 ... RESPONDENT in WA No.1018 of 2018

1 M.KUMAR

2 C.PAULRAJ

3 S.BASKARAN
4 P.SAMPATH KUMAR
5 N.MOHANRAJ
6 A.P.PUSPHANATHAN
7 C.PAULRAJ @ PALAN
8 R.VIJAYARANI
9 L.MARY QUINTILIYA
10 THE STATE OF TAMILNADU
REP BY ITS SECRETARY PUBLIC WORKS
DEPARTMENT FORT ST.GEORGE CHENNAI 9
11 THE PRINCIPAL CHIEF
ENGINEER (BUILDINGS) AND CHIEF ENGINEER
(GENERAL) PUBLIC WORKS DEPARTMENT CHEPAUK
CHENNAI 5
... RESPONDENT in WA No.1019 of 2018

Appeal filed against the order passed by this Court dated 22.09.2017 in WP No.7594/2014 issue a writ of certiorari mandamus Calling for the entire records relating to the impugned Government Order passed by the second respondent herein in G.O.Ms. No.74 Personnel and Administrative Reforms Department 27.6.2013 and which G.O.Ms. No.74 is relied on and acted upon by the first respondent in Letter No.33480/ 2010-27 dated 24.1.2014 and quash the same in so far as the petitioners are concerned

Prayer in WA No.2644 of 2018 : Appeal filed against the order passed by this Hon'ble Court dated 22.09.2017 made in WP No.34113 of 2013 praying to issue a writ of mandamus directing the first respondent herein to regularize the petitioner services on completion of 10 years of service without backwages and consequently direct the respondent herein to take into account the petitioner period of service from 10.5.1997 till date of regularization for the purpose of calculating pension alone in accordance with rules.

Prayer in WA No.1015 of 2018 : Appeal filed against the order passed by this Hon'ble Court dated 22.09.2017 made in WP No.29346 of 2014 praying to issue a writ of mandamus calling for records relating to the second respondents order made in G.O.Ms.No.74 P & AR (F) Department dated 27.06.2013 to an extent of paragraph 6 therein is concerned and that of the order of the

first respondent made in letter No.1298/C2/2010-24 dated 31.01.2014 to quash the same in so far as petitioners are concerned and to consequently direct the respondents to regularize the services of the petitioners on completion of 10 years of services and to extend all benefits both service and monetary

Prayer in WA No.1016 of 2018 : Appeal filed against the order passed by this Hon'ble Court dated 22.09.2017 made in WP No.7594 of 2014 praying to issue a writ of mandamus Calling for the entire records relating to the impugned Government Order passed by the second respondent herein in G.O.Ms. No.74 Personnel and Administrative Reforms Department 27.6.2013 and which G.O.Ms. No.74 is relied on and acted upon by the first respondent in Letter No.33480/ 2010-27 dated 24.1.2014 and quash the same in so far as the petitioners are concerned

Prayer in WA No.1017 of 2018 : Appeal filed against the order dated 22.09.2017 made in WP No.13545 of 2014 by this Hon'ble court praying to Calling for records relating to the second respondents order made in G.O.Ms.No.74 P & AR (F) Department dated 27.6.2013 to an extent of paragraph-6 therein is concerned and that of the order of the third respondent made in Letter No. S4(1)/22215/2009 dated 03.02.2014 to quash the same and to consequently direct the respondents to regularize the services of the petitioners on completion of 10 years of services and to extend all benefits both service and monetary

Prayer in WA No.1018 of 2018 : Appeal filed against the order dated 22.09.2017 made in WP No.15668 of 2014 by this Hon'ble court praying to Calling for records relating to the second respondent order made in G.O.Ms.No.74 P & AR (F) Department dated 27.06.2013 to an extent of paragraph-6 therein is concerned and that of the order of the first respondent made in Letter No.12661/C2/2013-4 dated 13.02.2014 to quash the same and to consequently direct the respondents to regularize the services of the petitioners on completion of 10 years of service and to extend all benefits both service and monetary

Prayer in WA No.1019 of 2018 : Appeal filed against the order dated 22.09.2017 made in WP No.29212 of 2014 by this Hon'ble court praying to calling for records relating to the second respondents order made in G.O.Ms.No.74 P & AR(F) Department dated 27.06.2013 to an extent of paragraph 6 therein is concerned and that of the order of the third respondent made in letter No.S4(1)/23131/2005 dated 25.03.2014 to quash the same in so far as petitioners are concerned and to consequently direct the respondents to regularize the services of the petitioners on completiton of 10 years of services and to extend all benefits both service and monetary

For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondents 1 to 4 : Mr.D.Balasubramanian

WA No.2644/2018 :
For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondent : Mr.K.L.Sekar

WA No.1015/2018 :
For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondents 1 to 6 : Mr.L.Chandrakumar

WA No.1016/2018 :
For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondent 1 to 4 : Mr.V.Ravi Kumar

WA No.1017 of 2018 :
For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondents 1 & 2 : Mr.L.Chandrakumar

WA No.1018 of 2018 :
For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondent : Mr.L.Chandrakumar

WA No.1019 of 2018 :
For Appellants : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondents 1 to 9 : Mr.L.Chandrakumar

COMMON JUDGMENT
(made by K.K.SASIDHARAN, J.)

Introductory:-

The learned Single Judge quashed clause 6 of the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013 and issued an order in the nature of a declaration that the petitioners in the writ petitions were entitled to regularization, on completion of ten years of service by virtue of the Government Order in G.O.Ms.No.22

Personnel and Administrative Reforms (F) Department, dated 28 February 2006. Feeling aggrieved by the common order dated 22 September 2017, quashing the Government Order in G.O.Ms.No.74, which was issued in supersession of the order in G.O.Ms.22, the State has come up with the intra court appeals.

The facts in brief :-

2. The respondents herein filed writ petitions before the writ court challenging Clause 6 of the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013 on the ground that the benefits given under the earlier order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006 could not be taken away by issuing a later Government Order as the same would attract the principle of Legitimate Expectation.

3. Before the writ court, the respondents contended they were initially appointed as casual labourers/NMRs and the employment was continuous and uninterrupted. The respondents made a claim that on account of the completion of 10 years of service, they are eligible for regularization in accordance with the Government Order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006. It was further contended that even before the issuance of the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013, the concerned employees completed 10 years of service and therefore, it was not correct on the part of the Government to withdraw the benefits by issuing another order at a later point of time.

4. The learned single Judge invoked the Doctrine of Legitimate Expectation to quash clause 6 of the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013. The learned Single Judge was of the view that the Government was not correct in giving retrospective effect to the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013 and it would be a clear case of colourable exercise of power. The learned Single Judge observed that the fundamental rights guaranteed by the Constitution of India was sought to be impinged by issuing the Government Order with retrospective effect. The writ petitions were accordingly allowed. The learned Single Judge issued a Mandamus directing the appellants to regularize the services of the respondents taking into account their completion of ten years of continuous service in the light of the Government Order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006.

5. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondents.

DISCUSSION:-

6. The respondents herein filed individual writ petitions claiming the benefits of the Government Order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006. The respondents took up a contention that they have completed 10 years of service and as such, their services should be regularized. The issuance of the subsequent Government Order in G.O.Ms.74, dated 27 June 2013 in supersession of the Government Order in G.O.Ms.No.22, dated 28 February 2006, made the respondents to file the writ petitions.

7. The core issue is as to whether the Government was legally correct in issuing the order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013, in supersession of the earlier Order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006.

8. The primary challenge before the writ court relates to clause 6 of the Government Order in G.O.Ms.No.74 dated 27 June 2013.

The relevant clause reads thus:-

"6. In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:-

(i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006,

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10(ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength;

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed;

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of

issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved."

9. The learned Single Judge appears to have not considered the individual cases to decide as to whether each of the respondents herein have completed 10 years of service making them eligible for regularization. The learned single Judge focused on the legality of the Government Order in G.O.Ms.74, dated 27 June 2013 and more particularly clause 6 of the said order.

10. The Government issued an order in G.O.Ms.No.22, dated 28 February 2006, pursuant to the announcement made by the Hon'ble Chief Minister on the Floor of the Legislative Assembly on 8 February 2006 that the services of the employees working in various Government Departments on daily wages basis and completed more than 10 years of service as on 1 January 2006, would be regularized. There was no condition in the said Government Order that the initial appointment should have been through Employment exchange or through a transparent procedure. The Government Order simply stated that on completion of ten years of service as on 1 January 2006, the services of employees on daily wages would be regularized.

11. The Government initiated action for regularizing the services of the employees on the basis of the Order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006. Several employees, notwithstanding the fact that they have not completed 10 years of services as on 1 January 2006, filed writ petitions to extend the benefits to them. The writ petitions were not properly defended by the concerned authorities and the same resulted in allowing the claim for issuance of directions for regularization, notwithstanding the fact that the employees have worked only on part time basis or failed to complete ten years of service as on 1 January 2006.

12. The Government appears to have taken note of the subsequent events, relating to the improper implementation of the regularization scheme and the same resulted in issuing an Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013. The Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, was not issued in continuation of the earlier order in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28 February 2006. It was in supersession of the earlier order.

13. The Government issued an order in G.O.Ms.No.22, dated 28 February 2006 for regularization, taking into account the policy decision for regularization of the services of the employees who have completed ten years of service on daily wages as on 1 January 2006. The policy decision was taken on 28 February 2006. The Government, on consideration of the implementation of the policy, took a decision to incorporate certain conditions for regularization. The later policy indicated in G.O.Ms.No.74 dated 27 June 2013 was in supersession of the earlier policy found in the Government Order in G.O.Ms.No.22 dated 28 February 2006.

14. The policy found in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006 was without any guideline for regularization. The Government Order proceeds as if on completing 10 years or more on daily wage basis as on 1 January 2006, the employee would get a right for regularization.

15. The mushroom growth of writ petitions claiming the benefits even by part time employees and those who have not completed 10 years of service as on the cut off date made the Government to issue another order in supersession of the earlier order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006

16. There is no question of invoking the Principle of Legitimate Expectation in a case of this nature. The policy of the Government was to regularize the service of the employees who have put in 10 years of service on daily wage basis. The Government wanted to ensure that only those employees who entered the service through employment exchange would qualify for regularization. Similarly, the Government wanted to confine the benefit only to the full time employees. The part time employees/casual employees and employees who have completed 10 years of service after 1 January 2006 are ineligible for regularization. This is the sum and substance of the subsequent policy, which was indicated in the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013.

17. The Government Order in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28 February 2006 was issued in the interest of the employees who were on daily wages and who have worked for more than 10 years. The Government wanted to streamline the process of regularization and it was only for the said purpose, the cut off date as well as the eligibility criteria were prescribed subsequently.

18. The Government is the proper authority to decide the merits and demerits of a particular policy. The Government earlier adopted a policy for regularization, and the same resulted in issuing an order in G.O.Ms.22 dated 28 February 2006. The very same Government found that the regularization scheme failed to attain the desired results and the same resulted in framing another policy which was the basis for the Government Order in G.O.Ms.74, Personnel and Administrative Reforms Department, dated 27 June 2013.

19. There was no cut off date prescribed in the order in G.O.Ms.22 dated 28 February 2006, for claiming regularization. The only condition is completion of 10 years of service as on 1 January 2006. Over a period of time, even those who were appointed after 1 January 2006 started claiming regularization. The Government analyzed the working of the regularization scheme and arrived at a view that it needed a change and the same resulted in the order in G.O.Ms.No.74 dated 22 June 2013.

20. The learned Single Judge proceeded as if the Government Order in G.O.Ms.22 dated 28 February 2006 has given a right to the employees and the said right cannot be taken away by way of another policy decision.

21. The Government has not taken away the right conferred on the employees who have completed ten years of service as on 1

January 2006. The Government through the subsequent order in G.O.Ms.74 dated 27 June 2013, indicated the parameters for consideration of the employees for regularization. The case of the employees who were engaged on part time basis were taken out of the regularization scheme.

22. The learned Single Judge quashed clause 6 of the Government Order on the ground that such amendment was uncalled for, after accruing a vested right. Clause 6 introduced in the order in G.O.Ms.74 dated 27 June 2013, was in supersession of the earlier Government Order. Therefore, it is clear that the very Government Order in G.O.Ms.22 dated 28 February 2006 was superseded by another Government Order in G.O.Ms.74 dated 27 June 2013. The Government Order in G.O.Ms.22 dated 28 February 2006 is not in existence now, in view of its supersession by the Government Order in G.O.Ms.74 dated 27 June 2013.

Legitimate expectation:-

23. The Doctrine of Legitimate Expectation arises out of a reasonable expectation from an employee who have been treated in a different way by the administrative authority in spite of the fact that the person who has such an expectation has no legal right to receive the benefit expected by him.

24. The Hon'ble Supreme Court in Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71, rejected the argument based on Legitimate Expectation to claim legally enforceable right.

The relevant paragraph reads thus:

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would

otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent." (emphasis supplied)

25. In *Union of India v. Hindustan Development Corporation and Ors.* (1993) 3 SCC 499, the Supreme Court summarized the legal position relating to Legitimate Expectation in the following words:-

"28 ... For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

Government Policy - Scope of judicial review

26. The Hon'ble Supreme Court in *Balco Employees Union (Reg) vs. Union of India*, (2002(2) SCC 333), indicated the parameters of judicial review in respect of Government policy.

"In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may

results in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court. It is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for then courts to consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a decision, right to 'trial and error' as long as both trial and error are bona fide and within limits of authority. For testing the correctness of a policy the appropriate forum is parliament and not the courts"

27. In APM Terminals B.V. vs. Union of India & Anr. (2011 (6) Scale 271), the Hon'ble Supreme Court held that the Government is empowered to change its policies with changing circumstances and only on grounds of change a policy does not stand vitiated. It was further held that the Government has the discretion to adopt a different policy, alter or change, its policy to make it more effective. The only qualifying condition is that such change in policy should be free from arbitrariness, irrationality, bias or malaice.

28. The scheme announced by the Government Order in G.O.Ms.22, Personnel and Administrative Reforms, dated 28 February 2006 was in the nature of a benefit to those who have completed 10 years of regular service. The Government has not taken away the right to regularize the services subsequently. The Government, by issuing the order in G.O.Ms.74, Personnnel

and Administrative Reforms (F) Department, dated 27 June 2013, made only an attempt to streamline the scheme relating to regularization. The Government which is the author of the earlier policy as found in G.O.Ms.22 dated 28 February 2006, is equally entitled to take a fresh policy decision in supersession of the earlier policy. No right would accrue to the employees to contend that the policy announced by the Government earlier should continue at all point of time. Further, this view taken by the Government is in tune with the judgment of the Hon'ble Supreme Court in C.A.Nos.2726 to 2729 of 2014, which arose from orders of this court. We are therefore of the view that the learned single Judge was not justified in quashing clause 6 of the Government Order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013.

29. The order passed by the learned single Judge quashing clause 6 is set aside. The writ petitions are remitted to the writ court for fresh consideration to decide as to whether each of the respondents are eligible for regularization in accordance with the order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013, or any other relevant Government Orders governing the matter. The individual cases must be decided on merits, taking into account the nature of service and the period of such service.

30. The Registry is directed to post the writ petitions for disposal before the concerned learned Judge as per roster.

31. The intra court appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

tar

To

1.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai 600 009

2. THE SECRETARY,
PUBLIC WORKS DEPARTMENT,
FORT ST. GEORGE CH- 9
3. THE ENGINEER IN CHIEF AND CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
CHEPAUK CH-5
4. THE PRINCIPAL SECRETARY TO
GOVERNMENT RURAL DEVELOPMENT AND PANCHAYAT
RAJ DEPARTMENT SECRETARIAT CHENNAI - 09.
5. THE DIRECTOR OF RURAL
DEVELOPMENT AND PANCHAYAT RAJ PANAGAL
BUILDINGS SAIDAPET CHENNAI -15.
6. THE DISTRICT COLLECTOR
TIRUVANNAMALAI DISTRICT
TIRUVANNAMALAI
7. THE PRINCIPAL CHIEF ENGINEER (BUILDINGS)
& CHIEF ENGINEER (GENERAL)
PUBLIC WORKS DEPARTMENT,
CHEPAUK, CHENNAI-5
8. THE CHIEF ENGINEER,
WRO, PWD,
CHEPAUK, CHENNAI-5
9. THE CHIEF ENGINEER (GROUND WATER)
PWD, THARAMANI,
CHENNAI-113.

Copy To
The Section Officer,
Writ Section, High Court, Madras
(for posting the WPs)

+2cc to Mr.V.Rengarajan, Advocate SR.No.69559

+4cc to Mr.L.Chandrakumar, Advocate SR.No.70275

+1cc to Government Pleader SR.No.70858 to 70860

W.A.Nos.2875,2644/2018,
1015 to 1019 of 2018

GJII (CO)
GMY(30/08/2019)